

IC 6-9-38

Chapter 38. Food and Beverage Taxes in Wayne County

IC 6-9-38-1**Application of chapter**

Sec. 1. This chapter applies to a county having a population of more than seventy-one thousand (71,000) but less than seventy-one thousand four hundred (71,400).

As added by P.L.214-2005, SEC.47.

IC 6-9-38-2**Application of definitions**

Sec. 2. Except as otherwise provided in this chapter, the definitions in IC 36-1-2 apply throughout this chapter.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-3**"Beverage"**

Sec. 3. As used in this chapter, "beverage" includes an alcoholic beverage.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-4**"Bonds"**

Sec. 4. As used in this chapter, "bonds" has the meaning set forth in IC 5-1-11-1.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-5**"Department"**

Sec. 5. As used in this chapter, "department" means the department of state revenue.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-6**"Economic development project"**

Sec. 6. As used in this chapter, "economic development project" has the meaning set forth in IC 6-3.5-7-13.1.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-7**"Food"**

Sec. 7. As used in this chapter, "food" includes any food product.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-8**"Gross retail income"**

Sec. 8. As used in this chapter, "gross retail income" has the meaning set forth in IC 6-2.5-1-5.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-9**"Obligations"**

Sec. 9. As used in this chapter, "obligations" has the meaning set forth in IC 5-1-3-1(b).

As added by P.L.214-2005, SEC.47.

IC 6-9-38-10**"Person"**

Sec. 10. As used in this chapter, "person" has the meaning set forth in IC 6-2.5-1-3.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-11**"Retail merchant"**

Sec. 11. As used in this chapter, "retail merchant" has the meaning set forth in IC 6-2.5-1-8.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-12**"Unit"**

Sec. 12. As used in this chapter, "unit" means:

- (1) a county described in section 1 of this chapter; or
- (2) a city or town located in the county described in section 1 of this chapter.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-13**Imposition of tax; ordinances; transmission of ordinance to state**

Sec. 13. (a) After January 1 but before August 1, the fiscal body of a unit may adopt an ordinance to impose an excise tax known as the unit's food and beverage tax on transactions described in section 14 of this chapter. The fiscal body of a unit other than a county may not adopt an ordinance under this chapter until after July 31, 2006, unless the fiscal body of the county adopts a resolution to relinquish its exclusive authority to adopt an ordinance under this chapter before August 1, 2006. If a county fiscal body adopts a resolution under this subsection, the county fiscal body shall send a certified copy of the resolution to the executive of each city and town located in the county.

(b) Before a fiscal body may adopt an ordinance imposing a food and beverage tax, the fiscal body must hold a public hearing on the proposed ordinance, with notice of the time, date, and place of the public hearing given in accordance with IC 5-3-1.

(c) If the fiscal body of a county adopts an ordinance to impose a food and beverage tax under this chapter, the county executive must also adopt a substantially similar ordinance to impose the tax.

(d) If an ordinance is adopted under subsection (c), the county executive shall immediately send a certified copy of the ordinance to the department.

(e) If a unit other than a county adopts an ordinance under this

section, the unit's executive shall immediately send a certified copy of the ordinance to the department.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-14

Transactions taxed

Sec. 14. (a) Except as provided in subsection (c), a food and beverage tax imposed under section 13 of this chapter applies to any transaction in which food or a beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the unit in which the tax is imposed; and
- (3) by the retail merchant for consideration.

If both a county and another unit located in the county impose a tax under this chapter, the tax imposed by the county does not apply within the territory of the other unit imposing the tax.

(b) Transactions described in subsection (a)(1) include transactions in which food or a beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverages sold on a "take out" or "to go" basis; or
- (3) sold by a street vendor.

(c) A food and beverage tax imposed under this chapter does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed under IC 6-2.5.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-15

Rate

Sec. 15. The food and beverage tax imposed on a food or beverage transaction described in section 14 of this chapter is equal to one percent (1%) of the gross retail income received by the retail merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-16

Repeal; conditions

Sec. 16. (a) If no bonds, leases, obligations, or other evidences of indebtedness of a unit that are payable from a food and beverage tax imposed under this chapter are outstanding, the unit's fiscal body may adopt an ordinance to repeal the unit's food and beverage tax.

(b) An ordinance described in subsection (a) must be adopted after January 1 but before September 1 of a year. The fiscal body

shall send a certified copy of the ordinance adopted under this section to the department.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-17

Effective date of ordinance

Sec. 17. If a fiscal body adopts an ordinance under this chapter, the ordinance takes effect January 1 of the year following the year in which the ordinance is adopted.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-18

Collection and payment; returns

Sec. 18. A food and beverage tax imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return that is filed for the payment of the tax may be made on a separate return or may be combined with the return filed for the payment of the state gross retail tax as prescribed by the department.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-19

Revenue distribution; notices

Sec. 19. (a) The department shall notify the county auditor of a county containing a unit that imposes a food and beverage tax under this chapter of the amount of tax paid in the unit.

(b) The amounts received from a food and beverage tax imposed under this chapter shall be paid monthly by the treasurer of state on warrants issued by the auditor of state to the county auditor of the county in which the unit that imposed the tax is located.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-20

Food and beverage tax revenue fund

Sec. 20. A county auditor shall establish for each unit in the county that imposes a tax under this chapter a local food and beverage tax revenue fund into which all amounts received monthly from the treasurer of state under this chapter shall be deposited.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-21

Additional revenue

Sec. 21. Revenue derived from a tax imposed under this chapter may be treated by a unit as additional revenue for the purpose of fixing its budget for the budget year during which the revenues are to be distributed to the unit.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-22

Use of revenue

Sec. 22. A unit may use revenues from a tax imposed under this chapter for one (1) or more of the following purposes:

- (1) To promote and encourage conventions, visitors, and tourism within the unit.
- (2) To promote and encourage economic development within the unit.
- (3) Paying debt service or lease rentals on:
 - (A) bonds;
 - (B) leases;
 - (C) obligations; or
 - (D) any other evidence of indebtedness of the unit;for a project described in subdivisions (1) and (2).

As added by P.L.214-2005, SEC.47.

IC 6-9-38-23**Property tax levy reduction prohibited**

Sec. 23. The department of local government finance may not reduce a unit's property tax levy by the amount of revenue received from a tax imposed under this chapter.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-24**Tax revenue committee established; members; terms; abolishment**

Sec. 24. (a) The food and beverage tax revenue committee is established to make recommendations concerning the use of money in the funds established under section 20 of this chapter. The committee consists of the following members:

- (1) One (1) resident of the county representing each of the three (3) commissioner districts, appointed by the county executive. Not more than two (2) of the members appointed under this subdivision may be from the same political party.
- (2) Two (2) residents of the county, appointed by the county fiscal body. The two (2) appointees may not be from the same political party.
- (3) Two (2) residents of the largest city in the county, appointed by the city executive. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in economic development.
- (4) Two (2) residents of the largest city in the county, appointed by the city fiscal body. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in tourism.

(b) Except as provided in subsection (c), the term of a member appointed to the food and beverage tax revenue committee under this section is four (4) years.

(c) The initial terms of office for the members appointed to the food and beverage tax revenue committee under subsection (a) are as follows:

- (1) Of the members appointed under subsection (a)(1), one (1)

member shall be appointed for a term of two (2) years, one (1) member shall be appointed for three (3) years, and one (1) member shall be appointed for four (4) years.

(2) Of the members appointed under subsection (a)(2), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(3) Of the members appointed under subsection (a)(3), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(4) Of the members appointed under subsection (a)(4), one (1) member shall be appointed for three (3) years and one (1) member shall be appointed for four (4) years.

(d) At the expiration of a term under subsection (c), the member whose term expired shall be reappointed to the food and beverage tax revenue committee to fill the vacancy caused by the expiration.

(e) The food and beverage tax revenue committee is abolished on the date that the county fiscal body adopts a resolution abolishing the food and beverage tax revenue committee. A county fiscal body may adopt a resolution under this subsection if the county fiscal body determines that each unit in the county that had imposed a tax under this chapter has adopted an ordinance to rescind the tax.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-25

Covenant with bond holders

Sec. 25. The general assembly covenants with each unit subject to this chapter and the purchasers and owners of bonds, leases, obligations, or any other evidences of indebtedness of the county payable from a tax imposed under this chapter that this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of a tax imposed under this chapter so long as the principal, interest, or lease rentals due under those bonds, leases, obligations, or other evidences of indebtedness of a unit that are payable from a tax imposed under this chapter remain unpaid.

As added by P.L.214-2005, SEC.47.

IC 6-9-38-26

Expiration

Sec. 26. If a unit incurs indebtedness payable from a tax imposed by the unit under this chapter, the unit's food and beverage tax terminates two (2) years after the retirement of the debt financed by the food and beverage tax.

As added by P.L.214-2005, SEC.47.